

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: Bankruptcy No.: 23-21623-JCM**

**J.T. AND SON CONSTRUCTION, LLC, Chapter 11**

**Debtor,**

**JOHN J. KURTZ,**

**Hearing Date & Time:  
November 30, 2023 at 9:30 a.m.**

**Movant,**

**v.**

**J.T. AND SON CONSTRUCTION, LLC,**

**Respondent.**

**MOTION FOR RELIEF FROM AUTOMATIC STAY, OR, IN THE ALTERNATIVE,  
REQUEST FOR ADEQUATE PROTECTION**

AND NOW, comes John J. Kurtz (hereinafter "Movant"), and files the within **MOTION FOR RELIEF FROM AUTOMATIC STAY OR, IN THE ALTERNATIVE, REQUEST FOR ADEQUATE PROTECTION**, and in support thereof, state as follows:

**Background**

1. The Debtor, J.T. and Son Construction, LLC (the "Debtor"), filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on August 2, 2023.
2. The Movant is the owner of a 2019 panel machine (hereinafter "Panel Machine").
3. Prior to the filing of the instant Bankruptcy Case, the Debtor permitted the Debtor to utilize the Panel Machine so long as he made monthly payments to the Movant's lender, Huntington Bank, while he was in possession of the Panel Machine. This was an oral agreement between the parties.

4. The Debtor ceased making such payments but retained and uses the Panel Machine to the detriment of the Movant.

5. The Movant maintains insurance to and holds title to the Panel Machine.

6. The Debtor's actions caused Huntington Bank to issue a notice of default to the Movant. A true and correct copy of the Notice of Default is attached hereto as **Exhibit A.**

7. As a result of the failure of the Debtor to remit payments, the Movant was forced to pay off Huntington to avoid default.

8. Despite this, the Debtor continues to withhold possession of the Panel Machine without making any payments to the Movant for its continued use thereof.

### **Argument**

9. The Bankruptcy Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334, 28 U.S.C §157(b)(2)(G), and is brought pursuant to 11 U.S.C. §362, 11 U.S.C. §554 and Bankruptcy Rules 4001, 6007 and 9014.

10. As set forth above, the Debtor continues to maintain possession of Movant's Panel Machine and use the Panel Machine in its business operations.

11. Despite this, the Debtor has failed and refused to make any payments to the Movant for its use of his Panel Machine.

12. The Panel Machine continues to depreciate, thereby diminishing the Movant's interest in his own machine.

13. Furthermore, the Movant is unaware if the Debtor has insured the Panel Machine.

14. To permit the Debtor to continue to utilize the Panel Machine of the Movant causes irreparable damage to the Movant, as his interest in the Panel Machine is not adequately protected.

15. As such, the Movant requires relief from the automatic stay to permit the Movant to take possession of the Panel Machine.

16. Alternatively, pursuant to 11 U.S.C. §363(e), adequate protection is to be given to a party whose interest in property is affected by the debtor's use, sale or lease of the property.

17. If the Debtor is permitted to continue to utilize the Panel Machine of the Movant, the Debtor should be required to pay adequate protection to the Movant.

WHEREFORE, the Movant respectfully requests that this Honorable enter the attached Order granting the Movant Relief from the Automatic Stay. Alternatively, it is requested that adequate protection be provided to the Movant.

Respectfully Submitted,

Date: October 16, 2023

/s/ David L. Fuchs  
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**CERTIFICATE OF SERVICE**

David L. Fuchs hereby certifies, that on the 16<sup>th</sup> day of October, 2023, a true and correct copy of the foregoing **MOTION FOR RELIEF FROM THE AUTOMATIC STAY, OR, IN THE ALTERNATIVE, REQUEST FOR ADEQUATE PROTECTION**, was served upon the following (*via electronic service*):

Jodi Hause  
Office of the United States Trustee  
Suite 960, Liberty Center  
1001 Liberty Avenue  
Pittsburgh, PA 15222  
Email: [jodi.hause@usdoj.gov](mailto:jodi.hause@usdoj.gov)

Brian C. Thompson  
Thompson Law Group, P.C.  
125 Warrendale Bayne Road  
Suite 200  
Warrendale, PA 15086  
[bhompson@thompsonAttorney.com](mailto:bhompson@thompsonAttorney.com)

Date: October 16, 2023

/s/ David L. Fuchs  
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